

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KENNETH CREIGHTON,

Plaintiff,

-against-

**DECLARATION OF
RICHARD GROSS**
12 CIV 7454 (PGG)

THE CITY OF NEW YORK, DETECTIVE DEAN
ROBERTS (Shield No. 05861), DETECTIVE
GLENN GODINO (Shield No. 2756), POLICE OFFICERS
JOHN DOES 1-10 (names being fictitious and presently
unknown and intended to be employees of the NYPD who
were involved in Plaintiff's arrest, detention, imprisonment,
and/or prosecution), DISTRICT ATTORNEY ROBERT T.
JOHNSON, ASSISTANT DISTRICT ATTORNEY BRUCE
BIRNS A/K/A BURNS, ASSISTANT DISTRICT ATTORNEY
ED TALTY a/k/a ED TULTY and ASSISTANT DISTRICT
ATTORNEY MICHAEL COOPER,

Defendants.

-----X

RICHARD GROSS declares the following under penalty of perjury pursuant to 28 U.S.C.

§1746:

1. I am an attorney duly admitted to practice law in the State of New York and a member of the law firm of Rubert & Gross, P.C. Together with Pazer, Epstein & Jaffe, P.C., we represent plaintiff, Kenneth Creighton. As such, I am familiar with the facts and circumstances stated herein and submit this declaration in reply to defendants' Opposition to plaintiff's Motion for Partial Summary Judgment and in further support of same.

2. Annexed hereto as Exhibit A is a copy of the Recommendation of Dismissal dated January 18, 2012, signed by Theresa Gottlieb, demonstrating that Kenneth Creighton was arrested and charged upon the statements of a single eyewitness.

3. Annexed hereto as Exhibit B is a copy of an email received from ADA Burim Namani demonstrating that, as of May 27, 2016, Fawaz still denies ever identifying Kenneth Creighton from a surveillance video as the person that passed a gun to Dior Creighton.

4. Annexed hereto as Exhibit HH is a copy of a DD5 bearing Bates Stamp #P00025, which demonstrates that Kenneth Creighton was to be arrested for criminal facilitation and in turn plaintiff “may inform this Department” where Dior Creighton “is hiding out”. This exhibit referenced in plaintiff Rule 56.1 Statement in support of his motion for summary judgment but the DD5 attached thereto is incorrect. Inadvertently, Exhibits GG and HH are duplicates.

Dated: July 26, 2016
New York, New York



RICHARD GROSS

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX PT. 80**

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

INDICTMENT NO. 639/2007

KENNETH CREIGHTON,

Defendant.

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RECOMMENDATION FOR DISMISSAL

PRELIMINARY STATEMENT:

Indictment Number 639/2007, filed February 9th, 2007, charged Kenneth Creighton with two counts of Criminal Possession of a Weapon in the Second Degree (P.L. § 265.03(1)(b) and P.L. § 265.03(3)) and Criminal Facilitation in the Second Degree (P.L. § 115.05).

FACTS AND PROCEDURAL HISTORY:

On December 26, 2006 at 5:48 P.M., defendant along with his brother Dior Creighton were inside a bodega at 800 East 168th Street. Defendant and Dior Creighton had a brief conversation. Defendant then handed Dior Creighton a handgun. Both men then left the bodega. Once outside, Dior Creighton fired several shots, hitting Lisette Ayala in the leg and John Cauldwell in the head, killing him. Kenneth Creighton was arrested on January 10, 2007 and bail was set at \$10,000. Defendant has been unable post bail and has remained incarcerated since his arrest.

Dior Creighton was arrested and charged (indictment 626/2007) with Murder in the Second Degree and Attempted Murder in the Second Degree. On January 3, 2012, Dior Creighton plead guilty to Attempted Murder in the Second Degree. He was sentenced on January

NYC 000238

19, 2012, to 14 years in prison with 5 years post-release supervision.

DEFENDANT'S CRIMINAL HISTORY:

- 1) 10/6/2005 - Bronx County
Attempted Robbery, 2nd. Degree (P.L. § 110.160.10(1))
Sentence - 5 years probation
- 2) 10/6/2005 - Bronx County
Petit Larceny (P.L. § 155.25)
Sentence - Time served
- 3) 7/7/2006 - Bronx County
Harassment, 2nd. Degree (P.L. § 240.26)
Sentence - Conditional Discharge

REASON FOR RECOMMENDATION:


Kenneth Creighton was arrested and charged based upon the statements of a single eyewitness. This eyewitness knows Kenneth Creighton and saw him hand Dior Creighton a handgun inside the bodega. This witness has now become unavailable to the Bronx District Attorney's Office. The witness could not be located by the case Detective at any of the telephone numbers or addresses provided. Further efforts to locate this witness by the Detective Investigator have been unsuccessful.

CONCLUSION:

Therefore, the People would be unable to proceed to trial.
WHEREFORE, the indictment against **Kenneth Creighton** should be dismissed. No previous recommendation of this nature has been made to any court.

DATED: BRONX, NEW YORK
January 18, 2012

Respectfully Submitted,



Theresa Gottlieb
Assistant District Attorney
Bronx County

NYC 000239

EXHIBIT B

From: Michael Jaffe

Sent: Wednesday, June 1, 2016 11:39 AM

To: 'Thadani, Kevin (Law)' <kthadani@law.nyc.gov>

Cc: Richard Gross <richardgross.court@gmail.com>; Ernestine Mings <emings.rgpc@gmail.com>

Subject: FW: Regarding People v. Kenneth Creighton 974/2016

Kavin,

Per our telephone conversation just now see below from the ADA on the current criminal case. I will send you hard copy with a cover letter as well.

Michael Jaffe

Pazer Epstein & Jaffe, PC

212-227-1212

Past President,

New York State Trial Lawyers Association

Co-Chair, Labor Law Committee,

New York State Trial Lawyers Association

<http://www.pazerandepstein.com>

----- Original Message -----

From: "Namani, Burim (BronxDA)" <Namanib@bronxda.nyc.gov>

To: "proth@rothlawny.com" <proth@rothlawny.com>

Date: May 27, 2016 at 10:53 AM

Subject: Regarding People v. Kenneth Creighton 974/2016

Ms. Roth,

I am the Assistant District Attorney assigned to the case of People v. Kenneth Creighton, 974/2016, which is next on July 14, 2016 in Part 77. I am writing this email to provide you with some information regarding the complainant in this case, even though I believe you already have this information. The complainant in this case is Fawaz Tareb. At the time of Kenneth Creighton's Criminal Court arraignments, on March 8, 2016, you made the record that Fawaz Tareb is the "star witness" in the pending federal civil lawsuit that defendant Creighton has against NYPD and Bronx District Attorney's Office. It appears that Fawaz Tareb is a witness in the civil case and he was deposed on June 3, 2015 regarding that case. During the deposition on June 3, 2015, Mr. Tareb testified regarding an incident from December 26, 2006. However, I am informing you that Mr. Tareb's testimony on June 3, 2015 is inconsistent with statements made by Mr. Tareb to an Assistant District Attorney on August 9th, 2011. It is People's information that on August 9th 2011, inside 198 East 161st Street, Mr. Fareb identified Kenneth Creighton from a surveillance video as the person that passed a gun to Dior Creighton. At his

June 3, 2015, deposition, Mr. Tareb denied ever stating to an Assistant District Attorney that it was Kenneth Creighton that passed the gun. Mr. Tareb still denies making that statement on August 9th, 2015. Please contact me with any questions.

Sincerely,
Burim Namani
Assistant District Attorney
Bronx County
198 East 161s Street
Bronx, NY 10451
718.838.6153

EXHIBIT HH

01/10/2007 13:56 71837888710

BX NIGHT WATCH

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UG 005-44130-1 W-100001

Complete All Applicable Captions

DO NOT USE THIS FORM TO REPORT: CRIME CLASSIFICATION CHANGES, CASE CLEARANCES, INITIAL ARREST ON THE COMPLAINT, RECOVERED PROPERTY, ADDITIONAL STOLEN PROPERTY SERIAL NUMBERS OBTAINED FOR PROPERTY PREVIOUSLY REPORTED, CRIME INCIDENT DATA, USE COMPLAINT FOLLOW-UP (PD 312-001) TO REPORT THE PRECEDING.

COMPLAINT - FOLLOW UP INFORMATIONAL PD 312-001A (Rev. 4-89)-31		PAGE 81 OF 81	
Crime: MURDER		Pct: 042	Complaint No: 10734
Date of Orig. Report	Date Assigned	Case No: 42-302	Unit Reporting: DBBX
Complainant's Name - Last, First, M.I.		Victim's Name - If Different	
Last Name, First, M.I.		Address, Include City, State, Zip	
Home Telephone	Business Telephone	Position / Relationship	Sex Race Date of Birth Age
Total No. of Perpetrators	Wanted Arrested	Weapon	Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)
Wanted Arrested	Last Name, First, M.I.	Address, Include City, State, Zip	
Sex Race	Date of Birth	Age	Height
Weight	Eye Color	Hair Color	Hair Length
Facial Hair	NYSID No.	3207631Y	
Wanted Arrested	Last Name, First, M.I.	Address, Include City, State, Zip	
Sex Race	Date of Birth	Age	Height
Weight	Eye Color	Hair Color	Hair Length
Facial Hair	NYSID No.		
AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."			
Comp. Interviewed	In Person	By Phone	Date
Witness Interviewed	In Person	By Phone	Date
Canvass Conducted	If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results		Crime Scene Visited
Complainant Viewed Photos	Results:		Witness Viewed Photos
Crime Scene Dusted	By (Enter Results in Details)		Crime Scene Photos
If Closing Case "No Results," Check Appropriate Box and State Justification in Details:			
C-1 Improper Referral C-2 Inaccurate Facts C-3 No Evidence / Can't ID C-4 Uncooperative Complainant C-5 "Leads" Exhausted			
DETAILS:			
I card# I2007000054			
1. U/S spoke w/ det Rivera BX v/s who informed me that deft's brother Keneth Cieghton Nysid# 0264425N is suppose to be reporting to his probation officer on this date 1-10-07 at which time the 42 pct sqd. Detectives will arrest Keneth on I-card# I20070000405 for criminal facilitation. In turn Keneth may inform thhis Department wher deft- Dior Crieghton is hiding out.			
2. U/s is awaiting confirmation from Det Godino 42 pct Sqd, regarding above information.			
3. U/S and partner did canvass vicinity of Perp's residence throuht the tour' but did not located deft- Dior Crieghton at this time.			
CASE	DATE REVIEWED / CLOSED	IF ACTIVE: DATE OF NEXT REVIEW	
REPORTING OFFICER:	RANK	SIGNATURE	NAME PRINTED
REVIEWING / CLOSING SUPERVISOR:	CASE	ENTER DESIGNATION	SIGNATURE
C O. S. INITIALS		C O. S. INITIALS	

P00025